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No. [redacted] 65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

BRIEF FOR THE APPELLEE

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IN THE
SUPREME COURT OF THE UNITED STATES

No. 954

ROBERT D. WATKINS,
Appellant,

versus

J. F. CONWAY,
Appellee.

BRIEF FOR THE APPELLEE

The decision of the Supreme Court of the State of Georgia as reported in the case of *Watkins vs. Conway, 221 Ga. Reports, page 374, 144 S.E. 2d., page 721 (1965)*, is printed in pages 10 through 12 of the record.

BASIS OF JURISDICTION

On March 21, 1966, this Court noted probable jurisdiction and the case was placed on the Summary Calendar. (R. p. 16) *Watkins vs. Conway, 383 U.S. 941 (1966).*

STATUTE INVOLVED

The appellant challenges the validity of the following statute, *Code Section 3-701 of the 1933 Code of the State of Georgia Annotated*, as follows:

> "Suits Upon Foreign Judgments—All suits upon judgments obtained out of this State shall be

brought within five years after such judgments shall have been obtained."

QUESTIONS PRESENTED

The appellant poses as question number one, the following:

> QUESTION NUMBER ONE: Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

The appellee takes vigorous issue with the appellant as to both the form and substance of this question, and particularly the latter part of said question which reads,

> ". . . while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an *additional period of five years*".

The reason the appellee takes issue with the appellant in the phraseology of question number one is that *Section 110-1001 of the 1963 Code of Georgia* provides as follows, to-wit:

> "Chapter 110-1001 Dormancy of judgments — A judgment shall become dormant and shall not be enforced:

1. *When seven years shall elapse after the rendition of the judgment* before execution is issued thereon and entered on the general execution docket of the county wherein such judgment was rendered; or

2. Unless entry is made on the execution by an officer authorized to levy and return the same and such entry and the date thereof are entered by the clerk on the general execution docket within seven years after issuance of the execution and its record; or

3. Unless a bona fide public effort on the part of the plaintiff in execution to enforce the execution in the courts is made and due written notice of such effort, specifying the time of the institution of the suit or proceedings, the nature thereof, the names of the parties thereto and the name of the court in which it is pending, is filed by the plaintiff in execution or his attorney at law with the clerk and entered by said clerk on the general execution docket, all at such times and periods that seven years will not elapse between such entries of such notices or between such an entry and a proper entry made as prescribed in paragraph 2.

The record of the execution made as prescribed in paragraph 1 of this section, or of every entry as prescribed in paragaph 2 or in paragraph 3, shall institute a new seven-year period within which the judgment shall not be-

come dormant: Provided, that when an entry on the execution or a written notice of public effort is filed for record, the execution shall be recorded or rerecorded on the general execution docket with all entries thereon.

It shall not be necessary in order to prevent dormancy that such execution be entered or such entry recorded on any other docket."

Also, *Code Section 110-1002 of the 1933 Code of Georgia as amended*, provides:

"110-1002 (4355). Revival of dormant judgment. — A dormant judgment may be revived by scire facias or sued on within three years from the time it becomes dormant. (Act 1823, Cobb, 498. Acts 1884-5, p. 95; 1910, p. 121)."

Therefore, it is the law of this State and it is well recognized that without question, the limitation period on a domestic judgment in the State of Georgia is seven years *(Code Section 110-1001, supra)*, and may be revived for an additional period of three years by writ of scire facias *(Code Section 110-1002, supra)*.

How the appellant has construed a domestic judgment into a limitation period of ten years is unknown to the appellee. This is a stretch of imagination of the law and it is respectfully submitted by the appellee that the appellant has not forthrightly phrased his question in the presentation of question number one.

Therefore, as to question number one, the appellee says that since question number one is erroneously

based on an erroneous interpretation of the above quoted Code Sections, that the simple question number one as presented by the appellant should be as follows:

> "QUESTION NUMBER ONE — Consistently with the full faith and credit clause, is *Section 3-701 of the 1933 Code of Georgia* constitutional?"

Based on the same argument as to question number one, it is contended that question number two as presented by the appellant, is based on an erroneous interpretation of the above quoted Code Sections applicable in this case. It would seem, therefore, obviously, that the appellant misconstrues the above quoted Code Sections, *Section 110-1001 and Section 110-1002, supra,* so as to say five years additional, in lieu of two years additional.

It is a simple fact from a reading of the Code Sections that one must gain the following interpretation:

(1) The limitation in Georgia on its domestic judgments is seven years. (Code Section 110-1001).

(2) After seven years, the dormant judgment may be revived by suing out a writ of scire facias for an additional period of three years. *(Code Section 110-1002).*

Since Question Number Two is erroneously phrased, both in form and substance of interpretation, the appellee contends that the proper question would be:

"QUESTION NUMBER TWO—Under the equal protection clause, does the State of Georgia discriminate against judgments rendered in the Courts of other states, by applying *Code Section 3-701?*"

STATEMENT OF THE CASE

The appellant, Robert D. Watkins, filed a personal injury suit against the appellee and one Charlie Ben Jones, in the Fifteenth Judicial Circuit of Florida, seeking damages. The appellant's petition as amended, alleges that a verdict was rendered in favor of the appellant on October 6,. 1952. That judgment was entered on said verdict some three years later, viz, October 5, 1955.

That thereafter, on October 5, 1960, five years and one day after the entry of said judgment, the appellant brought suit against the appellee on the Florida judgment in the Superior Court of Fulton County, Georgia.

The appellee defensively pled the Statute of Limitations, embracing the following Code Section:

> "*Georgia Code Section 3-701* — Suits upon foreign judgments — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

Thereafter, the Superior Court of Fulton County, Georgia, on or about June 1, 1965, after a hearing and argument of all counsel for parties litigant, did grant appellee's Motion For Summary Judgment on the

ground that it was barred by the Statute of Limitations of Georgia. *Code Section 3-701*, as above quoted.

The appellant timely appealed the ruling of Fulton Superior Court to the Supreme Court of the State of Georgia. On September 22, 1965, after oral argument by counsel for litigant parties, the Supreme Court of Georgia affirmed the decision of the Trial Court, upholding the constitutionality of said Code Section, and adjudging that the said Code Section neither violated the Full Faith and Credit clause, nor the equal protection clause of the Constitution. Appellant's Motion For Rehearing was denied on October 7, 1965.

ARGUMENT

The appellant in his brief, on page five, submits again the erroneous conclusion that under Georgia law, domestic judgments remain enforceable for a period of ten years, while the judgments of other states are enforceable for only five years. This is an erroneous conclusion and interpretation of *Code Section 110-1001* and *Section 110-1002 of the 1933 Code of Georgia as amended.*

In no sense of the word is there any discrimination as is contended by the appellant, and was so ruled by the Supreme Court of the State of Georgia.

The appellant, on page five of his brief, states the following:

> "The right of a state to impose some limitation period against foreign judgments is not questioned in this case. It is clear that a state may

apply a statute of limitations to foreign judgments, so long as it does so evenhandedly, without discrimination."

Obviously, this is a correct statement of the law.

It is contended by the appellee that when the legislature of the State of Georgia dealt with foreign judgments in *Code Section 3-701*, it was solely dealing with the name class "foreign judgments", which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time, as provided in *Code Section 110-1001, supra.*

Certainly a limitation period of five years as to foreign judgments as a class is a reasonable time and also evenhandedly deals with the other states and without discrimination as to the other states. It is argued that since the State of Georgia may apply a statute of limitations reasonable in character, evenhandedly, this Code Section is entirely proper, legal and constitutional. This is what the State of Georgia has done. This statute has stood as a fair, proper and just statute. Not only does this statute apply in Georgia, similar statutes apply in most all the states of the union.

The appellee cites the case of *Hughes vs. Fetter, 341 U.S. 609 (1951)* and *Wells vs. Simonds Abrasive Co.*, 345 *U.S. 514 (1953)*. These two cases deal with the bringing of suits. *Code Section 3-701*, under attack, is unrelated to suits of any kind. This statute under attack, refers solely to enforceability and the above cited authorities by the appellant are therefore irrelevant and immaterial in this consideration. The rationale of these two

cases as contradistinguished from the case before the Bar of this Court is that the two cases involve the right to bring a cause of action in tort, whereas, we have here before us an indolent plaintiff who waited more than five years to bring a suit based on his foreign judgment.

Can it not be said, that a period of five years is reasonable and is a sufficient length of time for a diligent plaintiff to pursue this cause of action. Can it also not be said that this plaintiff, appellant Robert D. Watkins, was indolent in not bringing his suit based on his foreign judgment until after the five year statute had tolled.

On page seven of the brief of the appellant, there is the following quotation:

> "Discrimination can be justified under the equal protection clause only if there are reasonable differences between the favored and disfavored classes which justify an unequal classification."

Here, we say that there is no discrimination. The five year statute is reasonable. The five year statute applies to all of the states of the union. The law refers solely to enforceability and is unrelated to suits of any kind. The law is constitutional.

The appellant, on page seven of his brief under the Argument title again continues to argue his interpretations of *Georgia Code Sections 110-1001 and 110-1002, supra*, as to the Georgia judgment remaining enforceable for a period of ten years. It is finally and vigorously argued that:

(1) The limitation of the Georgia law on its domestic judgments is seven years. *Code Section 110-1001.*

(2) This dormant domestic judgment after a period of seven years remains dormant for a period of three years upon which a new suit by writ of scire faciás may be brought, during such three year period to revive such Georgia judgment.

The attention of the Court is invited to the following Code Sections for its information:

1933 Code of Georgia Annotated, Section 110-1003.

"110-1003. (5973) Manner of renewal of dormant judgments; limitations. — When any judgment obtained in any court of this State shall become dormant, the same may be renewed by an action or by scire facias, at the option of the plaintiff, within three years from the time it became dormant. (Acts 1823, Cobb, 498)."

1933 Code of Georgia Annotated, Section 110-1004.

"110-1004. (5974) Actions to renew judgments, where brought. An action to renew a dormant judgment shall be brought in the county where the defendant resides at the commencement of the action."

1933 Code of Georgia Annotated, Section 110-1005.

"110-1005. (5975) Scire facias to revive. — Scire facias to revive a judgment is not an original action, but the continuation of the suit in which the judgment was obtained."

1933 Code of Georgia Annotated, Section 110-1006.

"110-1006. (5976) Issuance, return, direction, service, etc., of scire facias. — A scire facias to revive a dormant judgment in the superior courts must issue from and be returnable to the court of the county in which the judgment was obtained, shall be directed to all and singular the sheriffs of this State, and signed by the clerk of such court, who shall make out copies thereof, which shall be served by the sheriff of the county in which the party to be notified may reside, 20 days before the sitting of the court to which it is made returnable, and the original returned to the clerk of the court from which it issued; and an original and copy shall issue for each county in which any party to be notified may reside."

1933 Code of Georgia Annotated, Section 110-1007.

"110-1007 (5977) Revival of judgments against nonresidents — If the defendant or party to be notified shall reside out of this

State, a dormant judgment may be revived against such defendant or his representative by such process as is issued in cases where the defendant resides in this State: Provided, that the defendant or party to be notified shall be served with scire facias by publication in the newspaper in which the official advertisements of the county are published, twice a month for two months previous to the term of the court at which it is intended to revive said judgment; which service shall be as effectual in all cases as if the defendant or person to be notified had been personally served. (Act 1850, Cobb, 502)."

1933 Code of Georgia Annotated, Section 110-1008.

"110-1008. (5978) Judgment of revival, when taken; trial by jury. — In all cases of scire facias to revive a judgment, when service has been perfected as herein provided, such judgment may be revived, on motion, at the first term, without the intervention of a jury, unless the defendant shall file an issuable plea under oath, in which case the defendant shall be entitled to a trial by jury as in other cases."

1933 Code of Georgia Annotated, Section 110-1009.

"110-1009 (5979) Scire facias in favor of transferee. — The scire facias when the judgment has been transferred, shall issue in

> the name of the original plaintiff for the use of the transferee."

There can be no question therefore that in Georgia, the limitation period on its domestic judgments is seven years. Where the appellant gets ten years comes through additional legal proceedings.

In the case of *M'elmoyle vs. Cohen, 38 U.S. (13 Pet.) 312 (1839)*, this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign judgment and the Court based its holding on the reasoning that the statute of limitations was a plea to the remedy and not to the merits of the cause of action and consequently would bar the cause.

The appellant, on page nine of his brief cites the following:

> (1) "The Court's rationale (referring to the M'elmoyle vs. Cohen case, supra,) was that the forum state may legislate limitations upon the remedy, (i.e., procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment." (Perfectly, this is the contention. The Supreme Court of Georgia was correct. There was no attempt by the Supreme Court of the State of Georgia to go into the merits of the case. This law refers solely to its enforceability or procedure of limitations and is unrelated to suits of any kind.)

The appellant compares his position with the merits of certain causes of action regarding tort cases, whereas the matter before this Court relates simply, solely and completely and exclusively only to the enforceability. This statute is constitutional.

Surely, it cannot be said that there is discrimination in this particular statute, or as to its applicability in the case before the Bar of this Court. This statute does not violate full faith and credit, nor equal protection clauses of the United States Constitution and thusfar, no authorities have been cited by the appellant to the contrary.

On the contrary, the appellee cites to this Court the following:

Citations and Principles of Law:

> *50 Corpus Juris Secundum, Section 873, page 448 provides:*
>
> "The constitutional provision requiring 'full faith and credit' to be given to the judgments of other states is not violated by a statute imposing a reasonable period of limitation on the bringing of suits on such judgments." Citing *Kelly vs. Heller, 222 Pacific, page 648; 74 Colorado, page 470; and Bosich vs. Skemitti, 112 Southern, page 365; 146 Mississippi, page 491; 52 A. L. R. page 564; 34 Corpus Juris page 1110, note 44.*

It has been held that the constitutional provision requiring "full faith and credit" to be given to the judg-

ments of other states is not violated by the statute imposing the reasonable period of limitation upon the bringing of suit on such judgments:

U.S. — *Bacon vs. Howard, 20 How. 22, 15 L. Ed. 811; Randolph vs. King, 20 F. Cas. No. 11,560; 2 Bond, 104.*

Ill. — *Schemmel vs. Cooksley, 256 Ill. 412, 100 N.E. 141; Leathe vs. Thomas, 109 Ill. A. 434 (Aff. 218 Ill. 246, 75 NE. 810, 4 Ann. Cas. 79).*

Iowa — *Meek vs. Meek, 45 Iowa 294.*

La. — *Taylor vs. Joor, 7 La. Ann. 272.*

N. J. — *Little vs. McVey, (Sup.) 46 A. 61.*

S. C. — *Napier vs. Gidiere, 17 S. C. Eq. 215, 40 Am D. 613.*

Tex. — *Pryor vs. Moore, 8 Tex. 250; Tourtelot vs. Booker, (Civ. A.) 160 N.W. 293.*

It is also well established that a statute limiting the time within which an action may be brought on a judgment of a Court of another state does not violate the "full faith and credit" clause of the Federal Constitution as is held in the following citations:

U.S.C.A. Constitution, Article IV, Section 1;
Great Western Telegraph Co. vs. Purdy, 162 U.S. 329;
16 S. Ct. 810;
40 L. Ed. 986;
Metcalf vs. City of Watertown, 153 U.S. 671;
14 S. Ct. 947;
38 L. Ed. 861.

In the case of *G. E. Terry Ley, Trustee, vs. C. L. Simmons, et al, Kentucky Court of Appeals, June 20, 1952, 249 S. W. 2d 808; 36 A. L. R. 2d 563;* it was held as follows:

(a) The law of the forum governs remedies and procedures.

(b) In the absence of a contrary statutory provision, the time limitation to an action to enforce judgment obtained in another state is controlled by the law of the forum.

(c) A statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution.

(d) A statute of limitations does not extinguish the legal right but merely effects the remedy.

(e) That a state statute prohibits maintenance of an action on a judgment of a court of another state where the action is barred by the statute of limitations of that state does not preclude application of the period of the local statute to bar an action on a judgment not barred by the statute of limitations of the state of its rendition.

The contention that a statute of limitation of the forum as to a suit on a foreign judgment violated the

"full faith and credit" clause of the Federal Constitution has also been expressly overruled in the following cases:

U.S.	— *Randolph vs. King, 1867 Z Bond 104 Fed. Cas. No. 11,560;*
Col.	— *Kelly vs. Heller, 74 Col. 470, 222 Pac. 648;*
Ill.	— *Schemmel vs. Cooksley, 256 Ill. 412;*
Iowa	— *Meek vs. Meek, 45 Iowa 294;*
Ky.	— *MacArthur vs. Goddin, 12 Bush 274;*
La.	— *Taylor vs. Joor, 7 La. Ann. 272;*
S. C.	— *Napier vs. Gidiere, 17 S. Car. 215;*
Tenn.	— *Estes vs. Nyle, 1838 Meigs, 34 (Antedating M'elmoyle vs. Cohen (U.S. Supra));*
Wis.	— *Fields vs. Munday, 106 Wis. 383.*

CONCLUSION

The statute of limitations of five years is reasonable. (See *Great Western Tel. Co. vs. Purdy, supra,* as compared to *Kuykendall vs. Tod, 219 Fed. 707,* which held a three month period of limitation unconstitutional.)

As Mr. Chief Justice Duckworth of the Supreme Court of Georgia pointed out:

1. This code Section refers solely to enforceability and not to suits of any kind.

2. There is no statutory law of the State of Georgia dealing with suite on domestic

judgments, and none have been cited by counsel for the appellant.

3. When the Legislature dealt with foreign judgments, in Code Section 3-701, it was dealing with the name class "foreign judgments", which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Georgia Code Section Annotated 110-1001.

Therefore, AS TO QUESTIONS NUMBER ONE AND TWO, full faith and credit as required by the Constitution and equal protection as required by the Fourteenth Amendment is not denied foreign judgments by Code Section 3-701 of the 1933 Code of Georgia as amended.

Appellee respectfully requests that the decision of the Supreme Court of Georgia be affirmed and that Georgia Code Section 3-701 (1933) be declared constitutional.

Respectfully submitted,

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PROOF OF SERVICE

MARTIN McFARLAND, attorney for J. F. Conway, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the _____ day of _____, 1966, I served a copy of the foregoing Brief For The Appellee on the Appellant therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303.

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SUPREME COURT OF THE UNITED STATES

No. 65.—October Term, 1966.

Robert D. Watkins, Appellant, *v.* J. F. Conway. | On Appeal From the Supreme Court of Georgia.

[December 5, 1966.]

Per Curiam.

This litigation began when appellant Watkins brought a tort action against Conway in a circuit court of Florida. On October 5, 1955, that court rendered a $25,000 judgment for appellant. Five years and one day later, appellant sued upon this judgment in a superior court of Georgia. Appellee raised § 3–701 of the Georgia Code as a bar to the proceeding:

> "Suits upon foreign judgments.—All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

The Georgia trial court gave summary judgment for appellee. In so doing, it rejected appellant's contention that § 3–701, when read against the longer limitation period on domestic judgments set forth in Ga. Code §§ 110–1001, 1002 (1933), was inconsistent with the Full Faith and Credit and Equal Protection Clauses of the Federal Constitution. The Georgia Supreme Court affirmed, also rejecting appellant's constitutional challenge to § 3–701. 221 Ga. 374, 144 S. E. 2d 721 (1965). We noted probable jurisdiction under 28 U. S. C. § 1257 (2). 383 U. S. 941 (1966).

Although appellant lays his claim under two constitutional provisions, in reality his complaint is simply that Georgia has drawn an impermissible distinction between foreign and domestic judgments. He argues that the statute is understandable solely as a reflection of Georgia's desire to handicap out-of-state judgment creditors. If

appellant's analysis of the purpose and effect of the statute were correct, we might well agree that it violates the Federal Constitution. For the decisions of this Court which appellee relies upon do not justify the discriminatory application of a statute of limitations to foreign actions.[1]

But the interpretation which the Georgia courts have given § 3–701 convinces us that appellant has misconstrued it. The statute bars suits on foreign judgments only if the plaintiff cannot revive his judgment in the State where it was originally obtained. For the relevant date in applying § 3–701 is not the date of the original judgment, but rather it is the date of the latest revival of the judgment. *Fagan* v. *Bently*, 32 Ga. 534 (1861); *Baty* v. *Holston*, 108 Ga. App. 359, 133 S. E. 2d 107 (1963). In the case at bar, for example, all appellant

[1] The case most directly on point, *M'Elmoyle* v. *Cohen*, 13 Pet. 312, upheld the Georgia statute with which we deal today. But the parties in that case did not argue the statute's shorter limitation for foreign judgments as the ground of its invalidity. Instead, the issue presented to this Court concerned the power of the States to impose any statute of limitations upon foreign judgments. See argument for plaintiff, 13 Pet., at 313–320. The language of Mr. Justice Wayne's opinion—"may not the law of a state fix different times for barring the remedy in a suit upon a judgment of another state, and for those of its own tribunals," 13 Pet., at 328—must be read against this argument. And, of course, that opinion cannot stand against an equal-protection claim, since it was written nearly 30 years before the Fourteenth Amendment was adopted.

Neither of the cases cited by the Georgia Supreme Court dictates the result of this case. The first, *Metcalf* v. *Watertown*, 153 U. S. 671, involved a Wisconsin statute which provided a shorter limitation for foreign, as opposed to domestic, judgments. But the holding of the case was merely that this statute should be construed as placing the same limitation on the judgment of a federal court sitting in Wisconsin as would apply to a judgment of a Wisconsin state court. The other precedent cited by the court below, *Great Western Tel. Co.* v. *Purdy*, 162 U. S. 329, dealt with an Iowa statute of limitations on judgments that placed the same limitation on orders of foreign and domestic courts.

need do is return to Florida and revive his judgment.[2] He can then come back to Georgia within five years and file suit free of the limitations of § 3–701.

It can be seen, therefore, that the Georgia statute has not discriminated against the judgment from Florida. Instead, it has focused on the law of that State. If Florida had a statute of limitations of five years or less on its own judgments, the appellant would not be able to recover here.[3] But this disability would flow from the conclusion of the Florida Legislature that suits on Florida judgments should be barred after that period.[4] Georgia's construction of § 3–701 would merely honor and give effect to that conclusion. Thus, full faith and credit is insured, rather than denied, the law of the judgment State. Similarly, there is no denial of equal protection in a scheme that relies upon the judgment State's view of the validity of its own judgments. Such a scheme hardly reflects invidious discrimination.

Affirmed.

MR. JUSTICE DOUGLAS dissents.

---

[2] The Florida statute of limitations on domestic judgments is 20 years. Fla. Stat. Ann. § 95.11 (1) (1960). Thus, it appears that appellant still has ample time to revive his judgment and bring it back to Georgia. See *Massey* v. *Pineapple Orange Co.*, 87 Fla. 374, 100 So. 170 (1924); *Spurway* v. *Dyer*, 48 F. Supp. 255 (D. C. S. D. Fla. 1942). Moreover, appellant can obtain substituted service of process over appellee in his revival proceeding. Fla. Stat. Ann. § 48.01 (9) (1943).

The Florida procedure for reviving judgments is similar to that of Alabama—Ala. Code, Tit. 7, § 574 (1960)—which was held in *Baty* v. *Holtson*, 108 Ga. App. 359, 133 S. E. 2d 107 (1963), to revive a foreign judgment under § 3–701.

[3] Such a short statute of limitations for domestic judgments is by no means a matter of mere speculation. See 2 Freeman, The Law of Judgments, § 1076 (1925).

[4] If the appellant held a judgment from a State which did not consider its judgments to become dormant, so that no revival proceeding could be brought, we would be faced with a different case. See *Frank* v. *Wolf*, 17 Ga. App. 468, 87 S. E. 697 (1916).